

TEDDY W. MORGAN

IBLA 81-312

Decided October 26, 1981

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. NM MC 67948 through NM MC 67954.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Teddy W. Morgan, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Teddy W. Morgan has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated January 14, 1981, declaring the Red Arrow No. 1 through 7 lode mining claims, NM MC 67948 through NM MC 67954, abandoned and void because evidence of assessment work or notice of intent to hold the mining claims had not been filed with BLM on or before December 30, 1980, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulation at 43 CFR 3833.2-1(c).

On appeal appellant states: "I didn't have any of these proof of labor papers when I found out about filing with the Bureau of Land Management so I had to send for them, I was working so we didn't get these papers off early enough."

[1] Appellant's mining claims were located on August 28, 1979, and filed for recordation with BLM on September 11, 1979. BLM did not receive appellant's proof of labor with respect to assessment work performed during the 1979 to 1980 assessment year until December 31, 1980, 1 day after the deadline. The relevant regulation specifically recites that the owner of a claim located after October 21, 1976, shall file evidence of assessment work or notice of intention to hold the claim in the proper BLM office "on or before December 30 of each calendar year following the calendar year in which such claim was located." 43 CFR 3833.2-1(c). A mining claim is conclusively presumed abandoned where such documents are not filed timely, even though they are filed only 1 day late. M.D.C., Inc., 57 IBLA 35 (1981); Melvin Darby, 56 IBLA 41 (1981).

The above-cited statute and regulation impose this conclusive presumption of mining claim abandonment for any failure to file the required instruments in the proper BLM office by the date on which they are due. This Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). BLM has properly declared the claim, as recorded with BLM, abandoned and void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

